Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter Of	)	
	)	
Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules	)	CS Docket No. 95-178

To: The Commission

REPLY COMMENTS

Costa de Oro Television, Inc. ("Costa"), by its attorneys and pursuant to Sections 1.415 of the Commission's Rules, hereby files its Reply Comments in the above-captioned proceeding dealing with the market definition process to be utilized by the Commission in connection with the 1996 round of must-carry/retransmission consent elections. In support thereof, Costa states as follows.

1. In this proceeding, the Commission must decide what system of viewership measurement it will utilize to define markets for the 1996 round of retransmission consent/must-carry elections. For the last round of such elections, in 1993, the Commission used market definitions contained in the 1991-1992 ADI Market Guide ("1991-92 Guide") published by The Arbitron Company ("Arbitron"). Arbitron discontinued its television viewing measurement business in 1993, leaving the Commission with the choice of utilizing data created five years ago or the viewer

data now prepared by the sole remaining service, Nielsen Media Research ("Nielsen"), for the 1996 elections. The cable television commenters in this proceeding have argued in favor of the status quo by calling for retention of the 1991-92 Guide as the information source. Costa objects to this argument and submits these Reply Comments in response thereto.

2. First, the cable commenters fail to give proper consideration to the recently enacted Telecommunications Act of 1996 (the "Act"). Section 301(d)(1)(A) of the Act, which amends 47 U.S.C. 614(h)(1)(C), directs that the Commission undertake its market determinations "by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns."

3. This language is plain and clear. The Commission is charged with finding the commercial publications that provide television viewing information and then making use of them for Section 614(h)(1)(C) purposes. This hunt is not difficult since Nielsen is the only available commercial publication. The Commission must stop at this point, announce that the Act has to be complied with, and adopt Nielsen as the appropriate service for the 1996 elections.

4. In opposition thereto, the cable commenters seize on the absence of a specific direction in the Act to utilize Nielsen and to modify the market definition process from one that is Arbitron-based to one that is Nielsen-based. While there is no mandatory direction contained in the statute, there shouldn't be

one either. Just as nobody expected Arbitron to withdraw from viewer measurement, the Congress correctly recognized that changes in the business world are such that it could not, and should not, provide specific directions for the Commission to follow. While the Commission has discretion to choose among available measurement services, if there is competition, the Congress showed no intention whatsoever for the Commission to ignore an existing commercial publication in favor of a service that is no longer published. Nielsen is the only choice for this election; perhaps, there will be other choices when the next round of elections occurs.

5. Fearing that the Act alone requires a change from Arbitron to Nielsen markets, the cable commenters also make a public interest challenge to the use of Nielsen DMA (Designated Market Area) definitions. The alleged difficulties with the switch from one system to another are long on rhetoric and short on facts. The Commission is asked to accept bald allegations that have no foundation in fact. This is hardly how rulemaking should occur and it is obvious that the cable commenters lack good cause for their claims.

6. The principal argument in favor of the status quo is that the cable customer does not like disruption. While nobody likes disruption, it is surprising that the cable commenters present this argument. They are constantly changing their channel lineups to include or delete programming services, based on what they perceive as being economically beneficial to them. The

customer base is well aware of the process and capable of dealing with the changes, even when they don't like them.

7. Moreover, the cable commenters have failed to show that a switch from Arbitron to Nielsen will result in any dramatic change. In fact, the data in the record show that the changes will be, at best, slight in nature. There is absolutely no evidence that the degree of change will be any different from that which would have occurred had Arbitron remained in the television viewer measurement business and there was a new guide to replace the 1991-92 Guide.

8. The cable commenters also argue that there will be difficulties in negotiating retransmission consent agreements or must-carry elections. Again, Costa disagrees with this claim. The initial 1993 elections were not all that difficult. In 1996, with far fewer changes even if the Nielsen DMAs is the system adopted, the broadcaster and cable communities, already versed in procedures, will be able to secure and protect their rights.

9. Likewise, the changes in the compulsory license process brought on by the adoption of the Satellite Home Viewer Act ("Viewer Act") remove the difficulties attendant to the copyright liability process. The Viewer Act adopted a copyright liability policy predicated on markets as opposed to the old, cumbersome system that was based on distances, contours, and grandfathering. Applying the Viewer Act to Nielsen DMAs will make it relatively easy for cable systems to determine if they owe royalties for distant signals or not.

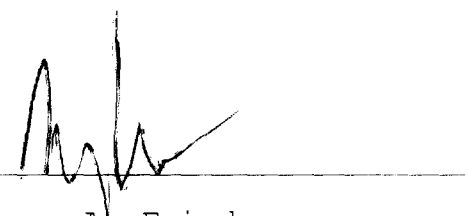
10. The cable commenters' final claim is that the status quo is not all that harmful since there is always the market modification process under 47 U.S.C. 614(h)(1)(C) and Section 76.59 of the Commission's Rules. While this sounds good as an argument it fails when due consideration is given. As the cable commenters well know, the modification process is complex and fraught with delays as the administrative and judicial review process is undertaken. The modification process is also intended for changes on a community-by-community basis. See TKR Cable Company of Elizabeth, DA 95-2377, released December 5, 1995. As the cable commenters also know, the changes resulting from a redefinition of the market go well beyond individual communities and do not require the evidentiary showing needed in order to meet the 47 U.S.C.614(h)(1)(C) standards. See Report and Order in MM Docket 92-259, 8 FCC Rcd 2976 (1993). Clearly, the modification process is in no way a substitute for a redefinition of markets resulting from a shift from Arbitron to Nielsen surveys. It is only a procedure to fine tune those markets once they are properly defined.

11. In sum, there is no case for the maintenance of the status quo. The Act has now provided a statutory basis for the adoption of the Nielsen DMAs as the standard for market definitions. As for the public interest, no showing has been made that the public interest will in any manner be harmed by the use of the Nielsen DMAs. In contrast, the public interest has to be benefited by the use of market definitions that are current

and reflect actual viewing practices as well as possible. Therefore, the Commission should adopt the Nielsen DMAs for the 1996 retransmission consent/must-carry elections.

Respectfully submitted,

COSTA DE ORO TELEVISION, INC.

By: 

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